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Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing
C0250005
#3987
K

February 8, 2012

CERTIFIED MAIL

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Kirk Nicholes, Resident Agent
Alton Coal Development, LLC
463 North 100 West, Suite 1
Cedar City, Utah 84720

Subject: Findings of Fact, Conclusions of Law, and Order for NOV 10092 Alton Coal Development, Coal Hollow Mine C/025/0005

Dear Mr. Nicholes,

On January 17, 2012 an Informal Conference was held at the Utah Department of Natural Resources to review the fact of violation and assessment for Notice of Violation No. 10092 ("NOV"). As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached document constitutes the Findings of Fact, Conclusions of Law, and Order.

Within fifteen (15) days of your receipt of this ORDER, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. Your written appeal may be filed with Julie Ann Carter, Board Secretary P.O. Box 145801 Salt Lake City, Utah 84115-5801. If you have questions regarding the filing, she can be contacted at juliecarter@utah.gov or (801) 538-5277.

If you have questions or concerns please contact me at (801) 538-5334.

Sincerely,

John Baza
Director
Division of Oil, Gas and Mining
Informal Conference Officer

JB/vs

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LETTER DATED 1/8/2012
FACT AND FINDING CONCLUSIONS
COAL HOLLOW MINE C0250005
NOV #10092

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Kirk Nicholes, Resident Agent
463 North 100 West, Suite 1
Cedar City, Utah 84720

**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

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IN THE MATTER OF THE	:	
INFORMAL CONFERENCE	:	
for the FACT OF THE VIOLATION	:	FINDINGS OF FACT,
PROPOSED ASSESSMENT	:	CONCLUSIONS LAW,
FOR VIOLATION	:	AND ORDER
No. 10092 ALTON COAL	:	
DEVELOPMENT, LLC.	:	CAUSE NO. C/O25/0005

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PROCEDURAL HISTORY

1. On December 19, 2011 Alton Coal Development, LLC ("Alton") timely requested an informal conference before the Division of Oil, Gas and Mining ("Division or DOGM") to review the fact of the violation and assessment for Notice of Violation No. 10092 ("NOV") issued on December 5, 2011 for failure to comply with the terms and conditions of the permit and assessed a penalty of \$660.00.
2. Pursuant to Utah Administrative Code R645-401-700, on January 17, 2012 at 2:00 p.m. at the Utah Department of Natural Resources Building, 1594 West North Temple, Salt Lake City, Utah, the Division held an Informal Conference to review the fact of the violation and the assessment for the NOV.
3. John Baza, Executive Director of the Division of Oil, Gas and Mining served as the Hearing Officer for the conference.
4. Dana Dean, Associate Director of the Division of Oil, Gas and Mining facilitated the Division's presentation of arguments and witnesses. Ms. Dean and the Division were represented by Steven F. Alder, Assistant Attorney General.
5. Joe Helfrich, Division staff, presented arguments in support of the issuance of the NOV.
6. Daron Haddock, Assessment Officer for the NOV, presented arguments in support of the assessment of \$600.00 for the NOV.
7. Larry Johnson and Kirk Nicholes, employees of Alton, were present on behalf of Alton. Mr. Johnson and Mr. Nicholes were represented by counsel, Denise Dragoo of Snell and Wilmer.

FINDINGS OF FACT

Based on information provided at the Informal Conference, statements presented by those speaking, and information in Division files, I make the following Findings of Fact.

8. On October 1, 2009 DOGM staff biologist Joe Helfrich met with representatives of Alton and agreed Alton would adopt a Sage-grouse Habitat Protection Plan. The parties agreed that if implemented properly, the plan would offset impacts to wildlife, in particular Sage-grouse, from mining operations.
9. To reflect this agreement, page 3-44 of Alton's Mining Reclamation Plan ("MRP") includes a preface to the "The Procedures to Minimize Adverse Impacts to Fish & Wildlife" section synthesizing where information and Alton's obligations related to Sage-grouse can be found:

"In addition to the language in the main body of the MRP regarding sensitive species, three appendices (Appendix 3-1, Appendix 3-3 and Appendix 3-5) were prepared separately and have been included to address the sage-grouse in the Alton area. Each of these appendices was submitted in different submittals to the State of Utah, Division of Oil, Gas, & Mining (DOGM). After each submittal, they were reviewed by the DOGM and other agencies, which provided comments. Accordingly, the comments were addressed and the next sage-grouse appendix was then written. In other words, the appendices were written in chronological order and each subsequent appendix was a result of comments from the previous one. Therefore, the last appendix written (Appendix 3-5) explains ACD's final mitigation plan for the sage-grouse in the Alton area. However, the previous Appendices (Appendix 3-1 and 3-3) remain in the MRP because they continue to provide valuable information regarding the natural history, previous work and process of addressing the Sage-grouse issues in the Alton area" (cumulatively "the Plan").

The Appendices were incorporated into the MRP on October 15, 2009.

10. Page 3-47 of the MRP states that the majority of a connectivity corridor as described in Appendix 3-5 between the Alton and Hoyt's Ranch Sage-grouse leks has been completed by removing juniper and reseeding the treated landscape with Sage-grouse preferred plant species.
11. Page 3-54 of the MRP outlines Alton's employee Wildlife Awareness Program. The program does not require Alton include a representative of the Utah Division of Wildlife Resources.
12. On October 19, 2009 DOGM approved Alton's MRP.
13. An approved MRP is a public document on file with the Division and is intended to include the most recent information available to inform the Division, the operator, and the public about how mining operations will occur at a mine site.

14. A mining permit is a separate and distinct document from an operator's MRP and defines the obligations an operator must comply with.
15. On November 11, 2010 DOGM issued Alton a mining permit for a term of five-years. Section 3 of Alton's permit states "the permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the state program."
16. Permit Condition # 6 of Special Conditions Attachment A states: "Satisfactory compliance with the Alton Sage-grouse Habitat Protection plan is required. Alton Coal Development, LLC, will use the best technology currently available to achieve the objectives of the plan in order to minimize the disturbances and adverse impacts to the sage grouse and related habitat and to enhance those resources where practicable. ACD will cooperate with the Division in consultation with state and federal wildlife agencies to develop reasonable practices and methods as are determined to be necessary to implement the plan and to measure success and achieve the goals of the plan."
17. On October 8, 2010 Alton submitted to the Division via email a "Greater Sage-grouse and Habitat Improvement Progress Report" ("2010 Progress Report") detailing progress on the Alton Sage-grouse Habitat Protection Plan. This document included a section entitled "Corridor Development and Improvements" and "Figure 2" which identified a Proposed Treatment to continue development of a corridor between the Hoyt Ranch and Alton Sage-grouse leks.
18. On February 2, 2011 DOGM employee Joe Helfrich met with Alton representatives, representatives for the Utah Division of Wildlife Resources, Alton's Sage-grouse consultant, and representatives from the U.S. Fish and Wildlife Service to discuss Alton's proposed work for 2011.
19. The representatives did not create a written record of the items or actions discussed nor create a written schedule or agreement about how to implement the items or actions discussed at this meeting.
20. Mr. Helfrich made several site visits and Inspection Reports related to Alton's progress on the Sage-grouse Protection Plan during the early Spring on 2011.
21. Alton timely submitted its 2010 Annual report in March 2011. The Annual report identified Sage-grouse work completed according to the 2010 Progress Report.
22. Mr. Helfrich's last Inspection Report related to Sage-grouse prior to his visit on November 30, 2011 from which he issued the NOV 10092 was May 10, 2011.
23. On April 12, 2011 Alton submitted to the Division an Addendum to Appendix 3-5 entitled "Greater Sage-grouse Monitoring and Habitat use in South-Central (Alton) Utah: Research Proposal 2011" ("2011 Research Proposal") proposing a data collection program through

collaring and trapping local Sage-grouse. This Research Proposal was incorporated into the MRP on May 12, 2011.

24. Alton was unable to carry out the directives of the 2011 Research Proposal because the Utah Division of Wildlife Resource declined to issue permits to collar and trap the Sage-grouse.
25. Alton did not inform the Division, in writing or otherwise, of the inability to obtain the appropriate permits to complete the 2011 Research Proposal nor make any attempt to modify the 2011 Research Proposal Addendum to Appendix 3-5.
26. Alton did not contact the Division to discuss any alternative Sage-grouse monitoring or research to conduct in lieu of the thwarted 2011 Research Proposal that would constitute continued compliance with Special Permit Condition 6.
27. A June 30, 2011 DOGM letter confirming completion of Alton's 2010 Annual Report, confirmed the Proposed Treatment identified in the 2010 Progress Report was completed and Alton had met the relevant requirements.
28. The June 30, 2011 letter also confirmed Alton met the requirements of the employee Wildlife Awareness Program and only requested Alton keep a log of attendees to submit with its 2011 Annual Report.
29. On December 5, 2011 DOGM employee Joe Helfrich issued Notice of Violation ("NOV") No. 10092 for failure to comply with :
 - 1) Special Permit Condition #6;
 - 2) Appendix 3-5 creating a corridor between Hoyt's Ranch and south Alton leks in cooperation with the Utah Division of Wildlife Resources;
 - 3) the approved 2011 Sage-grouse trapping and monitoring program (2011 Research Proposal); and
 - 4) the employee awareness program to include representation from the Division of Wildlife Resources.
30. The NOV listed Utah Code Ann. R645-300-143, "the permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program," as the relevant regulation violated.
31. The NOV required Alton to submit a revision to Appendix 3-5 of the approved MRP by no later than January 6, 2012 that includes:

- 1) a detailed Sage-grouse trapping and monitoring proposal for 2012;
- 2) detailed plans describing the creation of a corridor between Hoyt's Ranch and south Alton leks in cooperation with Utah Division of Wildlife Resources;
- 3) an employee awareness program that includes that includes representation from the Utah Division of Wildlife Resources.

Alton was also required to schedule consultation with representatives from Alton, DOGM, Division of Wildlife Resources, and U.S. Fish and Wildlife Service by no later than February 6, 2012 and ensure revisions to Appendix 3-5 are acceptable to participating agencies no later than February 23, 2012.

32. On December 23, 2011, pursuant to Utah Admin. Code R645-401-600 et. seq DOGM employee Darron R. Haddock assessed 3 history points; 13 seriousness points; and 10 negligence points for the NOV resulting in a total of 26 points and an assessed fine of \$660.
33. Alton has prepared, but not yet submitted to the Division, a "Greater Sage-grouse Population and Habitat Improvements Progress Report," dated January 16, 2012, ("2012 Progress Report") that outlines the work completed in 2011 and identifies Proposed Activities for 2012.
34. Alton understood this 2012 Progress Report was not due until its Annual Permit Report was due in March 2012.

CONCLUSIONS OF LAW

35. Alton has failed to comply with Special Permit Condition 6 by not updating their MRP to indicate what Sage-grouse habitat protection and mitigation work Alton has completed. Failure to update the MRP undermines the intent of the document by failing to adequately inform the public of the operating conditions at the mine.
36. Alton has completed the corridor between Hoyt's Ranch and south Alton leks.
37. Alton has, to the best of their abilities, complied with the 2011 Research Proposal. However, Alton failed to appropriately apprise the Division or amend the Addendum to Appendix 3-5 to indicate Alton did not receive the appropriate approvals to complete the 2011 Research Proposal. Alton did not propose any alternative compliance measures.
38. Alton has complied with the requirements in the MRP regarding the employee Wildlife Awareness Program
39. The Division has failed to establish a regular schedule of communication or clearly articulate expectations of when Alton needs submit information regarding compliance with the Plan and Special Permit Condition 6.

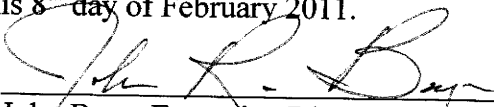
ORDER

1. The fact of the violation for NOV 10092 will stand due to the failure to establish proper communication between the Division and Alton to determine compliance with Special Permit Condition 6.
2. To reflect communication deficiencies on the part of both Alton and the Division, there will be no points assessed for the violation.
3. Alton and the Division will meet to establish a schedule of quarterly meetings to monitor expectations for and compliance with Special Permit Condition 6.
4. Quarterly meetings will include subject matter experts and representatives from DOGM, Alton, Utah Division of Wildlife Resources, and the Bureau of Land Management.
5. At these quarterly meetings the group will determine the content to be addressed in that year's upcoming progress plan, the format of the progress plan, establish a reporting schedule for the progress plan, monitor compliance with the progress plan, and establish when decision making requires a revision to Alton's MRP.
6. Each quarterly meeting will have a written record and an action plan to be accomplished for the next meeting.
7. Alton will meet with the Division at the Department of Natural Resources in Salt Lake City, Utah, within two weeks of this Order to agree upon an action plan to commence these quarterly meetings and bring Alton into compliance with Special Permit Condition 6.
8. The action plan will be implemented by March 1, 2012.

RIGHTS OF APPEAL

This ORDER may be appealed to the Board of Oil, Gas and Mining in accordance with the procedures set out in R645- 401-800 by filing a written petition for appeal with the Board within fifteen (15) days of receipt of the ORDER. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this ORDER, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right to further recourse.

SO DETERMINED AND ORDERED this 8th day of February 2011.



John Baza, Executive Director
Division of Oil, Gas and Mining
Informal Conference Officer